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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 ZACKERY CRABTREE,

Case No. 3:19-cv-00756-MMD-WGC

7 Plaintiff,

ORDER

8 v.

9 MICHAEL VIETA KABELL,

10 Defendant.

11 **I. SUMMARY**

12 *Pro se* Plaintiff Zackery Crabtree, currently incarcerated and in the custody of the
13 Nevada Department of Corrections (“NDOC”) filed suit under 42 U.S.C. § 1983, alleging a
14 conspiracy to violate NRS § 453.3405 between the district attorney, judge, and defense
15 attorney involved in his criminal case—this case is focused on the district attorney and
16 defense counsel.¹ (ECF No. 4.) Before the Court is the Report and Recommendation
17 (“R&R” or “Recommendation”) of United States Magistrate Judge William G. Cobb (ECF
18 No. 8), primarily recommending the Court dismiss this case with prejudice. Plaintiff filed
19 an objection to Judge Cobb’s Recommendation. (ECF No. 9.) As further explained below,
20 the Court will overrule Plaintiff’s objection because the Court agrees with Judge Cobb’s
21 analysis, will fully adopt the R&R, and dismiss this case.

22 **II. BACKGROUND**

23 As relevant to Plaintiff’s objection, Judge Cobb recommends dismissing this case,
24 with prejudice, because it is duplicative of Case No. 3:19-cv-00750-MMD-WGC (the “750
25 Case”). (ECF No. 8 at 1-2.) Plaintiff argues in his objection that Judge Cobb erred because
26 his R&R refers to Michael Kabell, but this case is against Jason Earnest. (ECF No. 9.)
27

28 ¹Plaintiff has filed four nearly identical cases. The other three are Case Nos. 3:19-cv-00750-MMD-WGC, 3:19-cv-00751-MMD-CLB, and 3:19-cv-00755-MMD-CLB.

III. LEGAL STANDARD

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” *Id.* Because of Plaintiff’s objection to the R&R, the Court has undertaken a de novo review of it, including the other documents filed in this case.

IV. DISCUSSION

Following a de novo review of the R&R and the other records in this case, the Court finds good cause to accept and adopt Judge Cobb’s R&R in full. The Court addresses below Plaintiff’s objection.

Plaintiff’s objection is erroneous. Judge Cobb did not err in referring to Michael Kabell in his R&R because in Plaintiff’s operative, amended complaint (ECF No. 4), Plaintiff states he is suing Michael Kabell in the caption (*Id.* at 1). And which Defendant Judge Cobb referred to in his R&R is immaterial anyway. This case is malicious under 28 U.S.C. § 1915(d)-(e) because, as Judge Cobb noted as to the 750 Case, and as noted *supra* at 1 n.1, it is duplicative of three other pending cases Plaintiff filed. (ECF No. 8 at 1-2.) *See also Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (noting “[t]here is no abuse of discretion where a district court dismisses under § 1915(d) a complaint ‘that merely repeats pending or previously litigated claims.’”) (citation omitted). The Court will dismiss this case for this reason. As this case is malicious, the Court will dismiss this case with prejudice because amendment would be futile. *See id.* at 1111 (affirming dismissal with prejudice where amendment would have been futile).

V. CONCLUSION

The Court notes that Plaintiff made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines

1 that they do not warrant discussion as they do not affect the outcome of the issues before
2 the Court.

3 It is therefore ordered that the Report and Recommendation of Magistrate Judge
4 William G. Cobb (ECF No. 8) is accepted and adopted in full.

5 It is further ordered that Plaintiff's objection (ECF No. 9) is overruled.

6 It is further ordered that that this case is dismissed in its entirety, with prejudice.

7 The Clerk of Court is directed to close this case.

8 DATED THIS 2nd day of April 2020.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written above a horizontal line.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE